

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte Keith T. White

Appeal No. 96-0969
Application 08/200,420¹

ON BRIEF

Before COHEN, ABRAMS and STAAB, *Administrative Patent Judges*.
STAAB, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on an appeal from the examiner's final rejection of claims 1 to 6, all the claims in the application.

Appellant's invention pertains to a device for

¹ Application for patent filed February 23, 1994.

controlling the flow of liquid from a bottle. The device includes a cage mounted in the spout of a bottle, with a floating element, buoyant in the liquid in the bottle, loosely received and confined within the cage. The floating element is capable of obstructing the flow of liquid from the bottle when the bottle is in a roughly horizontal position (see Fig. 4), but floats free of the spout passage when the bottle is oriented away from the horizontal position (see, for example, Fig. 5). As explained on page 2 of the brief, "the device prevents spilling of liquid from the bottle when the bottle is tipped from a 'spout up' position to a 'spout down' position. This is typically the motion employed when changing water bottles in a water bottle cooler." Claim 1, a copy of which is found in an appendix to appellant's brief, is illustrative of the appealed subject matter.

The single reference of record relied upon by the examiner in support of a rejection under 35 U.S.C. § 102(b) is:

DeQuillfeldt	355,642	Jan. 4, 1887
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Claims 1 to 6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by DeQuillfeldt.

Reference is made to appellant's brief and reply brief (Paper Nos. 11 and 13) and to the examiner's final rejection and answer (Paper Nos. 6 and 12) for the respective positions of appellant and the examiner with regard to the merits of this rejection.

Opinion

DeQuillfeldt discloses a bottle-stopper "of that class in which the stopper itself is hollow and provided interiorly with a valve tightening against a seat in the said stopper by the gaseous pressure from a charged beverage in the bottle" (page 1, lines 8-13). The bottle-stopper comprises a cap A, preferably made of tin, threaded into the neck of a bottle. A bail C permanently secures the cap to the neck of the bottle, but leaves the cap free to rotate and slide upon the bottle neck (page 1, lines 68-72). A sliding ball valve F, made of rubber or other elastic material (page 1, lines 73-74), is trapped in a passage in the cap. In use, bottles provides with stoppers of the type described "are charged through the valve-opening in the said stopper without taking the stopper out of the bottle-neck" (page 1, lines 13-16).

Anticipation is established only when a single prior art

reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention. *RCA Corp. v. Applied Digital Data Sys., Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984).

Each of the independent claims on appeal calls for a floating element (e.g., a sliding ball) that is buoyant in the liquid to be contained in the bottle. The examiner's position that the rubber sliding ball valve F of DeQuillfeldt meets this claim limitation because rubber floats in liquid and therefore the stopper F inherently floats (final rejection, page 2) is not well taken. As is made clear by appendixes 1 and 2 attached to appellant's brief, the specific gravity of rubber compounds varies. In particular, the specific gravity of rubber may be either greater or less than 1.0. Furthermore, the specific gravity of beverages that are likely to be contained in DeQuillfeldt's bottle, e.g., alcoholic beverages, varies. Accordingly, depending on the specific rubber compound and the specific beverage contained in DeQuillfeldt's bottle, a ball valve F made of rubber may or may not be buoyant in the liquid contained in the bottle.

However, mere possibilities or even probabilities are not enough to establish inherency. See *In re Oelrich*, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981). Accordingly, DeQuillfeldt's disclosure that ball valve F may be made of "rubber or other elastic material" is insufficient to establish a prima facie case of inherency with respect to the buoyancy characteristic called for in the appealed claims.

In response to appellant's argument in the brief, the examiner advanced the following theory of operation of the DeQuillfeldt device in an attempt to bolster his position of inherency:

In order for the stopper of DeQuillfeldt to operate and function as disclosed, the valve (F) must be able to float in the liquid present in the bottle. Otherwise, if the valve were made such that it did not float, when the bottle is inverted to dispense the liquid, the valve (F) would leave its resting position on the pins (n) and, by force of gravity and of the liquid, fall into the position shown in figure 1 of the drawings. Thereby, resealing the bottle, not allowing the liquid to be dispensed and rendering the invention inoperable. [Answer, page 4.]

We cannot support this theory of operation. DeQuillfeldt states that the bottle-stopper disclosed therein is "of that class . . . [wherein] the stopper (with the valve in it) is

removed from the aperture in the bottle-neck when it is desired to pour the liquid out of the bottle" (page 1, lines 8-19; emphasis added). Thus, the examiner's theory of operation does not comport with DeQuillfeldt's clear description of how the device operates. In any event, even if it were desired to dispense liquid from the bottle with the stopper in place in the neck of the bottle, as proposed by the examiner, appellant's alternative theory that the ball valve could just as likely be neutrally buoyant such that liquid could be dispensed from the bottle when it is oriented in a horizontal position is just as plausible as the examiner's theory of operation.

In light of the above, the standing § 102 rejection of the appealed claims as being anticipated by DeQuillfeldt cannot be sustained.

Remand to the Examiner

U.S. Patent No. 4,741,448 to Alley has been made of record in the present application. This patent teaches "[a] buoyant ball . . . provided within a water bottle to provide a momentary gate for restricting water flow out of the bottle as

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it is inverted" (abstract). We *remand* this application to the examiner to consider the patentability of appellant's claimed subject matter in light of this patent and other known prior art.

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Summary

The rejection of claims 1 to 6 as being anticipated by
DeQuillfeldt is reversed.

This case is *remanded* to the examiner for the reason
indicated above.

REVERSED AND REMANDED

IRWIN CHARLES COHEN)	
Administrative Patent Judge)	
)	
)	
NEAL E. ABRAMS)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
LAWRENCE J. STAAB)	
Administrative Patent Judge)	

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